Alumina Ceramics, Inc. and United Steelworkers of America, AFL-CIO, CLC. Case 26-CA-8375

August 17, 1981

DECISION AND ORDER

By Chairman Fanning and Members Jenkins and Zimmerman

On March 2, 1981, Administrative Law Judge Lowell M. Goerlich issued the attached Decision in this proceeding. Thereafter, Alumina Ceramics, Inc., Respondent herein, filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, ¹ and conclusions of the Administrative Law Judge, as modified herein, and to adopt his recommended Order, ² as modified herein.

The General Counsel has excepted to the failure of the Administrative Law Judge to find that Respondent violated Section 8(a)(1) of the Act when its president, Kenneth Holiman, who was concerned about the possible adverse reaction of employees to the unlawful discharge of John McCool, stated to employee John Sledd, using an obscene colloquialism indicating anger, "if [Sledd was angry with Holiman because of McCool's discharge], or [with] anybody in the plant, then he didn't want [Sledd] working on the ball mills or anywhere in the plant." For the reasons stated below, we find merit in the General Counsel's exception.

It is well settled that employees who attempt to persuade their employer to modify or reverse a management decision are engaged in conduct which is protected by Section 7 of the Act. See, generally, Datapoint Corporation, 246 NLRB 234 (1979); Oregon State Employees Association, 242 NLRB 976 (1979); Hendricks County Rural Electric Membership Corporation, 236 NLRB 1616 (1978); Columbia University, 236 NLRB 793 (1978); Sabine Towing & Transportation Co., Inc., 224 NLRB 941

(1976). Likewise protected are discussions among employees regarding such an attempt. Oregon State Employees Association, supra.

In the instant matter, Holiman told Sledd, in essence, that, if he was displeased with Respondent's decision to discharge McCool, then Holiman did not want him working anywhere in the plant. In the circumstances of this case, we conclude that this statement is an implied threat to discharge Sledd for voicing his displeasure with Respondent's decision, either to other employees or directly to Respondent. See Bell Burglar Alarms, Inc., 245 NLRB 990 (1979). Clearly, such a threat would tend to discourage Sledd from engaging in the protected activity of attempting to persuade Respondent to modify or reverse its disciplinary decision or discussing such an attempt with his fellow employees. Accordingly, we conclude that in making such statement Respondent violated Section 8(a)(1) of the Act.3

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Alumina Ceramics, Inc., Benton, Arkansas, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

- 1. Insert the following as parapraph 1(e) and reletter the subsequent paragraph accordingly:
- "(e) Unlawfully threatening employees with discipline for voicing their displeasure with Respondent's disciplinary decisions."
- 2. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

¹ Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. Standard Dry Wall Products, Inc., 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

² In accordance with his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would compute interest on backpay as set forth in the formula therein.

³ Inasmuch as the Administrative Law Judge's Conclusions of Law encompass this type of violation, we find it unnecessary to supplement those conclusions.

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT do anything which interferes with these rights.

WE WILL NOT discourage membership in United Steelworkers of America, AFL-CIO, CLC, or any other labor organization, by unlawfully discharging any of our employees or discriminating against them in any other manner with respect to their hire or tenure of employment.

WE WILL NOT unlawfully interrogate employees regarding their union or other concerted activities.

WE WILL NOT unlawfully bestow or deny benefits to our employees in order to discourage their affection for the Union.

WE WILL NOT unlawfully cause the arrest of any of our employees to discourage their union activities.

WE WILL NOT unlawfully threaten employees with discipline for voicing their displeasure with our disciplinary decisions.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL offer John Curtis McCool reinstatement to his former job or, if his job no longer exists, to a substantially equivalent job, discharging, if necessary, any employee hired to replace him.

WE WILL restore John Curtis McCool's seniority and other rights and privileges previously enjoyed and WE WILL pay him the backpay he lost because we discharged him, with interest.

All our employees are free to become or remain, or refrain from becoming or remaining, members of a labor organization.

ALUMINA CERAMICS, INC.

DECISION

STATEMENT OF THE CASE

LOWELL M. GOERLICH, Administrative Law Judge: The charge was filed on April 10, 1980, by United Steelworkers of America, AFL-CIO, CLC, herein referred to

as the Union, and was duly served on Alumina Ceramics, Inc., herein referred to as Respondent, on the same date. A complaint and notice of hearing was issued on May 23, 1980. The complaint alleges that Respondent discharged its employee, John C. McCool, on April 3, 1980, in violation of Section 8(a)(3) of the National Labor Relations Act, as amended, herein referred to as the Act, and that Respondent committed other unfair labor practices in violation of Section 8(a)(1) of Act. Respondent filed a timely answer denying that it had engaged in the unfair labor practices alleged.

The matter came on for hearing on November 13 and 14, 1980, in Benton, Arkansas. Each party was afforded full opportunity to be heard, to call, examine, and cross-examine witnesses, to argue orally on the record, to submit proposed findings of fact and conclusions of law, and to file briefs. All briefs have been carefully considered.¹

FINDINGS OF FACT, CONCLUSIONS, AND REASONS THEREFOR

I. THE BUSINESS OF RESPONDENT

At all times material herein, Respondent, a corporation with an office and place of business in Benton, Arkansas, herein called Respondent's facility, has been engaged in the manufacture and sale of aluminum oxide sealing rings.

Annually, Respondent, in the course and conduct of its business operations described above, sold and shipped from its Benton, Arkansas, facility products, goods, and materials valued in excess of \$50,000 directly to points outside the State of Arkansas.

Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

Respondent employs approximately 59 employees at its Benton facility in the manufacture of aluminum oxide sealing rings. William Kenneth Holiman was the president of Respondent and the highest ranking supervisor. Jim Hobbs was the director of manufacturing and Jon Paul Hester was the immediate supervisor of John C. McCool, the alleged discriminatee herein.

The Union filed a petition for a representation election on March 17, 1980. A unit determination hearing was held on March 27, 1980. McCool and employees Sandra J. Redden, Don Martin, and John C. Sledd attended this hearing. A Decision and Direction of Election was issued on April 15, 1980. According to Holiman, Respondent participated in the election campaign by "[j]ust

¹ There being no opposition thereto, the General Counsel's motion to correct the official transcript is granted and the transcript is corrected accordingly.

telling the facts." Typical of such relations was advice to the employees, "Just because you signed the union card doesn't mean you are a mandatory joinee . . . of the union . . . you haven't necessarily joined the union. You can vote 'Yes' or 'No,' regardless of whether or not you signed the cards."

Additionally, during the campaign at a supervisors' meeting² Holiman read the computer list of the names of Respondent's employees. After each name was written the words "No," "Yes," or "Undecided" based upon the "guesstimate" of the supervisors present. A majority of the employees so designated were against the Union. McCool was represented as being in favor of the Union. Respondent did not favor a successful election.

Several times during the election campaign Hester talked to employee Sledd "about the [union] meetings. He'd ask me if we [were] going to have a meeting this week, or something like that; if I [were] going." Sledd answered in the affirmative, indicating that he was going to "get both sides of the story." Hester denied the conversations. Sledd is credited. "Any interrogation by the employer relating to union matters presents an ever present danger of coercing employees in violation of their [Section] 7 rights." Texas Industries, Inc., et al. v. N.L.R.B., 336 F.2d 128, 133 (5th Cir. 1964). Such interrogation has a "natural tendency to instill in the minds of employees fear of discrimination on the basis of the information the employer has obtained." N.L.R.B. v. West Coast Casket Company, Inc., 205 F.2d 904 (9th Cir. 1953).

In the instant case Respondent has shown no legitimate business purpose in seeking the information nor did it assure the employee that he would be free from reprisals if the information was given. The interrogation tended to restrain, coerce, and interfere with employees in the exercise of their Section 7 rights and was unlawful. By the use of the interrogation mentioned above, Respondent violated Section 8(a)(1) of the Act.

The General Counsel further contends that approximately 3 weeks before the election Respondent, on April 8, 1980, committed an unfair labor practice when Holiman cosigned a \$1,000 loan for employee Sledd. It is alleged that the loan was cosigned in order to discourage employees' union activities. Sledd was prounion and a known union partisan.

According to Sledd, he had tried to get a loan from the Benton State Bank to finance the purchase of a motorcycle but was told that "money was tight" and "they couldn't give loans for foolishness." Sledd disclosed his dilemma to Hester who suggested that Sledd contact Holiman. Sledd related his experience with the Benton State Bank to Holiman who advised him to "hang loose." Later Holiman contacted Sledd and told him that he thought he knew some people at the Union Bank where he would cosign for a loan. Holiman said that Sledd was "truthful and a hard worker, and that [he] deserved a motorcycle if [he] wanted one." He told Sledd to "take off work and go up there and fill the papers out." Sledd left work and went to the Union Bank where he applied

for the loan. The next day after Holiman had cosigned the note Sledd received the money.

Respondent granted loans to employees up to \$300 although on occasion Holiman had supplemented such loans from his own account. However, he never had advanced as much as \$1,000 or cosigned for a loan for an employee of such amount.³

Holiman's efforts in obtaining a loan for Sledd resulted in the bestowal of a benefit on Sledd, the purpose and the effect of which was to influence Sledd's affection toward the Union and the Company.

In the case of Honolulu Sporting Goods Co., Ltd., a Subsidiary of Zale Corporation, 239 NLRB 1277, 1280 (1977), the Board said, "Under settled Board policy, a grant or promise of benefits during the critical preelection period will be considered unlawful unless the employer comes forward with an explanation, other than the pending election, for the timing of such action." Here the employer has presented no valid explanation. By Holiman's bestowal of the benefit, Respondent violated Section 8(a)(1) of the Act.

Prior to the election Respondent had provided a couple of beer parties or "beer busts" for employees. Sledd testified that he asked Holiman whether there was to be another beer party. Holiman answered that there would be no more beer parties because "the union activity was going on [and] they would say it was a bribe." Holiman denied that he had uttered the remark. Sledd's testimony is credited. Holiman's placing the odium for the withdrawal of further beer parties or "busts" on the Union was coercive and violated employees' Section 7 rights and was in violation of 8(a)(1) of the Act.

John C. McCool had been under the supervision of Hester for around 4 years. He worked in the ball mill department and was considered by Hester to be a "fair" employee who needed "medium supervision." He was known to be a union partisan; he adorned himself with a blue and white patch bearing the words "AFL-CIO, Steelworkers Union."

On April 3, 1980, McCool was discharged by Holiman "because of his insubordination to Jon Paul [Hester] and because of his being drunk on the job."

McCool had been drinking on April 3, 1980, but had stopped at or around 2 a.m. Thereafter, he slept at Tull Bottoms (an area described in the record as "woods and creeks and swamps, just woods and dirt roads") from whence he drove about 12 or 13 miles in his truck to Respondent's parking lot where he parked his vehicle shortly before 7 a.m., the time his workday began. He proceeded to the breakroom where other employees were waiting for the beginning of the shift. Hester appeared and announced that it was time to start work. McCool responded in words of this character: "F—you. We'll go to work when we get ready to." Hester replied, "I'll overlook that this time." According to Hester, McCool responded, "Who the hell do you think you are? F—you." He then gave Hester "the bird."

During this dialogue employees laughed at McCool's remarks. McCool was "funning."

² Holiman first testified that he had attended no such meeting, but when he returned to the witness stand after Hester had revealed that there was such a meeting he admitted attending the meeting.

³ Holiman's version of the loan incident varies from that of Sledd. Where there is conflict, Sledd is believed.

As the employees left the breakroom for their jobs, Hester asked if anyone had a "smoke." McCool replied, "Someone give the man a cigarette or he'll fire you." Sledd gave Hester a cigarette.

According to Hester, he was of the opinion that McCool was drunk and he told him to "go home and sleep it off and come back in the morning when he felt better." McCool answered, "Okay," and indicated that he had to go to the ball mill area for something. Hester gave him permission.

Sledd (who worked with McCool on the ball mills), Hester, and McCool differ in some respects as to their versions of what happened. According to Sledd, as he, McCool, and Hester were proceeding toward the ball mill area Hester asked McCool if he was drunk. McCool answered, "No," but added that he felt pretty rough because he had been drinking the night before in Tull Bottoms all night and had slept there all night. He had spent only a "couple of hours" sleeping. Hester said to McCool, "[W]hy didn't he go home if he felt bad, if he was sick." McCool replied, "Well let me eat something at break," and that "he needed to talk to Sandy and [then] he would leave."

According to Sledd, after about 7:30 Sledd and McCool had returned from an errand in another building. Hester appeared and asked McCool "why don't he leave before some of the other people get in from the office." McCool answered, "All right. I'll leave after I eat me something and talk to Sandy."

Thereafter, Sledd and McCool began loading the ball mills which involved hoisting 500-pound barrels to the top of a platform to be emptied into the mills. In this process McCool operated a forklift, and he also climbed a ladder to the top of the mills, removed a heavy metal door, and emptied the barrels into the mills.

McCool testified that he had responded to Hester while walking to the ball mill area that he "couldn't afford to lose two days' pay because it was the day before a holiday." According to McCool, after he and Sledd had finished loading the ball mills he "waved" to Hester who "came back." McCool told him that he was going home after the 8:30 break. Hester responded, "Okay."

According to Hester, about 7:45 he returned to the ball mill area and said to McCool that he thought he had left. Hester said, "I want you to leave. Go home, sleep it off, because I don't want you crawling around on top of the ball mills in your condition." McCool responded, "Okay," and Hester escorted McCool to the breakroom where he saw McCool walk out the back door.

In the meantime Hester met Hobbs in a hallway and told him that McCool was drunk and insubordinate; that "he had instructed him to leave twice and he didn't do it." He also mentioned that McCool gave him "the finger." Hobbs suggested that they go to the breakroom to ascertain whether McCool had left. They found McCool eating a sandwich. According to Redden, Hobbs said something to the effect, "John wasn't you asked to leave?" McCool answered, "Yes. Okay." McCool then left.

Thereafter, Hobbs asked Hester to meet with him and Holiman to discuss the McCool incident. Hester related to Hobbs and Holiman that McCool was "drunk and insubordinate." He said:

I told them that I went to the break room at 7 o'clock and instructed the employees to go to work. John McCool told me, "F— you. We'll go to work when we get ready."

And I said, "I'll overlook that this time."

He [came] back and said, "Who the hell do you think you are? F— you," and gave me the finger.

At this time the employees started going into the plant and I said, "Has anyone got a smoke?"

He said—John McCool said, "Someone give this man a cigarette or he'll fire you."

At that time I noticed that he was drunk, smelled liquor on his—whiskey on his breath; his eyes were bloodshot; his speech was slurred, he was staggering. At this time I told him to go home and sleep it off and come back in the morning, and he then said, "Okay. I've got to go to the ball mill area to get something."

I said, "Okay."

At this time I instructed the employees, each one, got them lined out on their jobs, set up their tooling and, like I said before, I was called in and out of the office periodically.

Johnny Potter, I was setting his machine up and he asked me if they could drink whiskey on the job, and I said, "No, you know better than that."

At this time I was in the office again, and then I came out and that's when I noticed John McCool was still in the ball mill area.

I then went to John McCool and told him again to go home, get some sleep, get some rest, come back in the morning, because I didn't want him climbing around on the ball mills in his condition. So I walked with him back to the break room, started into the break room. I stood there because someone at the machine called me over to give them some help, so I stood there and watched him go out the back door and went on about my business.

Then I went into the office to see if Jim Hobbs had arrived yet. I met him in the hallway, told him what had happened; he told me, "Let's go to the break room and see if he actually left."

So we went to the break room. John McCool was sitting at the break room table eating something, and Jim Hobbs told him, "John McCool, I think you've been told once to leave."

And John McCool said, "Okay," and he got up and went out the back door.

Hester testified that he reported the McCool incident as a "matter of course" and at that time he did not feel that McCool should have been fired. In reviewing his reaction to the McCool incident, Hester testified, "I should've offered to give him a ride home is what I should've done."

Hobbs first raised the issue of discipline. Hobbs recommended that McCool be fired. Holiman concurred. Thereafter, Hester also concurred. Holiman said that he

would deliberate. Hester heard of the discharge at or about 1 o'clock.

Hobbs had called the police at 8:40 a.m. and reported that a drunk employee was driving a truck home. He testified, "I was just angry and called the police." McCool was picked up and released. The "breathalizer" test did not indicate that he was intoxicated within the meaning of the Arkansas statute on the subject. Hester and Holiman stated that at the time of McCool's discharge they did not know of the arrest.

Holiman testified that he decided to fire McCool at or about 10 or 10:30 a.m. He phoned McCool at lunchtime to notify him of the discharge. He advised McCool that the discharge was based on "insubordination and being drunk on company property." McCool was the first employee ever discharged for insubordination or drunkenness. Hobbs was asked whether Respondent had an announced policy on drunkenness. He answered, "Well, we had the policy. It had happened before, and if they weren't able to work, we would send them home." Hobbs described the insubordination as "[r]efusing to go to work—refusing to go home when he [Hester] told him." Hobbs said that McCool's discharge was "[m]ostly his insubordination . . . he could have went home."

The off-color word and gesture employed by McCool were not uncommon expressions among Respondent's employees. Independent of employees, referred to the employees as "one big family down there, kind of." Nor was Respondent intolerant of employees' "hangovers" or possible drunkenness. Employees with "hangovers" had been excused from work. Hobbs testified in this regard, "We've had several to send theirself [sic] home, come in—'Well, my head's hurting too bad, I want to go home'—and we allowed them to go home." Supervisor Ward, who had a drinking problem, was not fired but was permitted to resign. Respondent conducted beer parties on its premises.

After Holiman had fired McCool he visited Sledd in the plant and asked him whether he was "mad" over McCool's discharge. Sledd responded that he was not "mad" but was "kind of put down, though, because John McCool had a bunch of personal problems and his wife had just kicked him out and he didn't have nowhere to go and they already knew he was living with me." Holiman replied that "if [Sledd] had a hard on for him, or anybody in the plant, that he didn't want me working on the ball mills or anywhere in the plant." While Holiman's version of the conversation differed from that of Sledd, he did testify, "I... wanted to explain it to him

because I didn't want anybody working in that critical area that had a grudge against the company or myself."8

After lunch on April 3, 1980, Hester called employee Redden to the breakroom. Of this encounter Redden credibly testified:

He told me he wanted me to know, and wanted me to tell McCool, that he had not had anything to do with him being fired, that he had not wanted to get involved with all the crap to do with the union because he knew there was going to be trouble, and that's the reason he had tried to get McCool to go home, because he knew that Mr. Hobbs would fire him if he saw him in that condition.

I am not unmindful of the holding of the Board in Wright Line, a Division of Wright Line, Inc., 251 NLRB 1083 (1980), and specifically of the burden of proof cast upon the parties by such decision. I not only find that the General Counsel has established a prima facie case, but I am convinced that McCool's conduct was seized upon as a pretext for his discharge. The following factors are persuasive. Respondent was unsympathetic toward the Union and committed unfair labor practices as herein found to influence its employees' vote. Respondent knew that McCool was a union partisan. McCool was a fair worker requiring minimum supervision. No evidence of any prior misconduct on McCool's part was offered. Prior to the entry of Holiman and Hobbs into the affair Hester had overlooked McCool's crass remarks. Indeed, McCool's conduct did not take on the character of a "Federal" case until it reached the Holiman-Hobbs level. Moreover, the inference is strong that Hobbs caused the arrest of McCool for driving under the influence of liquor for the purpose of strengthening the reasons for firing McCool. Indeed, in this regard it is significant that Hobbs sent McCool from the plant in what he believed to be a drunken condition although such condition would obviously have constituted a danger for McCool and others using the highways. Under these circumstances Hobbs' anger is not a valid rationalization of his conduct.

McCool's case was the first in which an employee had been discharged or disciplined for being drunk on the job or insubordinate. He was the only person ever reported to the police by Respondent for leaving the plant in an alleged drunken condition. Hence the discrimination is obvious. Discrimination consists of treating like cases differently. Mueller Brass Company v. N.L.R.B., 544 F.2d 815 (5th Cir. 1977); Frosty Morn Meats, Inc. v. N.L.R.B., 296 F.2d 617, 621 (5th Cir. 1961). Other employees who had arrived at the plant in similar condition as did McCool were neither disciplined nor discharged. Respondent's policy was to allow such employees to return home. While McCool failed to leave the plant as

⁴ Hobbs testified, "I told them that I had a man at work that I was sending home, that he was drunk."

⁵ Redden had refused to run a drill press and was not fired for the re-

⁶ Sledd testified, "We'd be sitting in his [Hester's] office and he would be telling us... if we were going to have to bust our butts and get a lot of material to the press—a lot of big sticks and stuff... this is an example: 'You lazy bastards are going to get off your ass and get this sh—going.' I said, 'Oh, f— you.'"

⁷ During the conversation, Holiman asked Sledd what he would do if he were a foreman and employees told him to "f—" himself. Sledd answered, "[I]t happens all the time. Jon Paul tells me I am a crazy, little son of a bitch or, 'F— you, you bastard' or something, and I tell him the same thing. It's just jokes."

⁸ The General Counsel claims that Holiman's remarks constituted a violation of Sec. 8(a)(1) of the Act. This claim is not sustained.

⁹ The Board has said in *American Thread Company, Sevier Plant*, 242 NLRB 27 (1979), "When the evidence convinces us that similar transgressions, when engaged in by other employees, would not have resulted in an equally severe response, it is necessary to inquire further into the employer's motives."

punctually as Hester had represented to his supervisors that he had desired, McCool did meekly leave the plant without causing any disciplinary problems. He had been granted permission to proceed to the ball mill area so he cannot be faulted for being there. Moreover, another employee had not been disciplined for failing to follow an order. Additionally, it would seem specious to infer that Holiman would have been so exacting of McCool in his use of an expletive toward a supervisor as to label it insubordination when Holiman answered the General Counsel, "Jesus Christ, I don't know" and "How the hell should I know?" Holiman's duplicity is apparent.

Thus the conclusion is clear, as was observed by Hester to employee Redden, that the union activity was the cause of the discharge. Respondent's motive was to discourage employees' union activities. Accordingly, it is found that Respondent, by discharging McCool, violated Section 8(a)(3) of the Act. 10

Since McCool's arrest was clearly related to, and an inextricable part of, his discriminatory discharge and in anticipation thereof, Hobbs' participation therein was coercive and violative of Section 8(a)(1) of the Act. See Albertson Manufacturing Company, 236 NLRB 663, 666-668 (1978).

CONCLUSIONS OF LAW

- 1. The Union is a labor organization within the meaning of Section 2(5) of the Act.
- 2. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and it will effectuate the purposes of the Act for jurisdiction to be exercised herein.
- 3. By unlawfully discharging John Curtis McCool on April 3, 1980, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.
- 4. By interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
- 5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

It having been found that Respondent has engaged in certain unfair labor practices, it is recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. It having been found that Respondent unlawfully discharged John Curtis McCool on April 3, 1980, in violation of Section 8(a)(3) of the Act, it is recommended in accordance with Board policy that Respondent offer the foregoing employee immediate and full reinstatement to his former position or, if such position no longer exists, to substantially equivalent employment, without prejudice to his seniority or other rights and privileges, dis-

missing, if necessary, any employee hired on or since April 3, 1980, to fill any of such position, and make him whole for any loss of earnings that he may have suffered by reason of Respondent's acts herein detailed by payment to him of a sum of money equal to the amount he would have earned from the date of his unlawful discharge to the date of an offer of reinstatement, less net earnings during such period, with interest thereon, to be computed in the manner established by the Board in F. W. Woolworth Company, 90 NLRB 289 (1950), and Florida Steel Corporation, 231 NLRB 651 (1977). 11 Additionally, because Respondent's unfair labor practices go to the very heart of the Act, a broad order requiring Respondent to cease and desist from in any other manner infringing upon the rights guaranteed its employees by Section 7 of the Act is recommended. N.L.R.B. v. Entwistle Mfg. Co., 120 F.2d 532 (4th Cir. 1941).

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record in this proceeding, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER 12

The Respondent, Alumina Ceramics, Inc., Benton, Arkansas, its officers, agents, successors, and assigns, shall:

- 1. Cease and desist from:
- (a) Discouraging union or concerted activities of its employees or membership in United Steelworkers of America, AFL-CIO, CLC, or any other labor organization, by unlawfully and discriminatorily discharging employees or discriminating in any other manner with respect to their hire or tenure of employment or any term or condition of employment in violation of Section 8(a)(3) and (1) of the Act.
- (b) Unlawfully interrogating its employees about their union or other concerted activities.
- (c) Unlawfully bestowing or denying benefits to employees in order to discourage their affection for the Union.
- (d) Unlawfully causing the arrest of an employee in order to discourage union activities.
- (e) In any other manner interfering with, restraining, or coercing any employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act, as amended, to engage in self-organization, to bargain collectively through a representative of their own choosing, to act together for collective bargaining or other mutual aid or protection, or to refrain from any and all of these things.
- 2. Take the following affirmative action which will effectuate the policies of the Act:

¹⁰ The decision of the Arkansas Employment Division in connection with McCool's discharge has been considered and weighed in the light of the Board's policy.

¹¹ See, generally, Isis Plumbing & Heating Co., 138 NLRB 716 (1962). While the 9-percent interest requested by the General Counsel seems reasonable under present economic conditions, the same is a policy matter best referred to the Board.

¹² In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

- (a) Offer John Curtis McCool immediate and full reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, discharging, if necessary, any employee hired to replace him, and make him whole for any loss of pay in accordance with the recommendations set forth in the section of this Decision entitled "The Remedy."
- (b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this recommended Order.
- (c) Post at its Benton, Arkansas, plant copies of the attached notice marked "Appendix." Copies of said

notice, on forms provided by the Regional Director for Region 26, after being duly signed by Respondent's authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 26, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER RECOMMENDED that the complaint be dismissed insofar as it alleges violations of the Act other than those found in this Decision.

ant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

¹³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursu-